

IN THE UNITED STATES SUPREME COURT

~~Supreme Court, U.S.~~

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FILED

Lynn E. Landes,
Plaintiff-Appellant, Pro Se

05 • 930 JAN 20 2006

v.

OFFICE OF THE CLERK

MARGARET TARTAGLIONE, in her official capacity as Chair
of the City commissioners of Philadelphia; PEDRO A. CORTES,
in his official capacity as Secretary of the Commonwealth of
Pennsylvania; ALBERTO GONZALES, in his official capacity as
the Attorney General of the United States, Defendants-Appellees

On Petition for Writ of Certiorari to United States Court of
Appeals for the Third Circuit, No. 04-4421 & 04-4439

Petition for Writ of Certiorari

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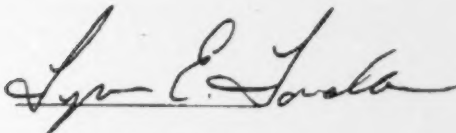
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Dated: January 20, 2006

QUESTIONS

Does the right to vote and to have votes counted properly apply to all citizens?

Does the use of voting machines and absentee ballots in elections for public office violate appellant's right to vote and to have votes counted properly?

Does appellant have the right to a physical (i.e., paper) ballot?

Is voting by machine and absentee an inherently nontransparent process that unlawfully denies meaningful oversight by appellant as a journalist?

Must appellant prove fraud or discrimination in order to gain standing?

Does appellant's right to vote and have votes counted properly supersede the privacy and convenience considerations of election officials, absentee voters, and disabled voters?

Did the Third Circuit Court of Appeals abuse their discretion by taxing defendants' costs against plaintiff and despite the fact that the District Court had not done so?

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CITATIONS OF OPINIONS AND ORDERS

(U.S. District Court for the Eastern District of Pennsylvania
and U.S. Court of Appeals for the Third Circuit)

- Order: Landes v Tartaglione, DC 04-3164, plaintiff's TRO denied, 10/12/04
- Order: Landes v Tartaglione, CA 04-4021, on plaintiff's DC 04-3164, TRO denied, 10/26/04
- Memorandum & Order: Landes v Tartaglione, DC 04-3164, granted defendants' motion to dismiss, 10/26/04
- Memorandum & Order: Landes v Tartaglione, DC 04-3163, denied TRO and granted defendants' motion to dismiss, 10/28/04
- Opinion, Order, & Judgement: Landes v Tartaglione, CA 04-4421 & 04-4439, affirmed district court ruling, 11/2/05
- Order: Landes v Tartaglione, CA 04-4421 & 04-4439, denied appellant's motion on costs, 11/2/05

BASIS FOR JURISDICTION

This case (Landes v Tartaglione, CA 04-4421 & 04-4439, 11/2/05, U.S. Court of Appeals for the Third District affirmed the U.S. District Court for the Eastern District of Pennsylvania ruling) is brought under Article I § 2 of the U.S. Constitution, the First Amendment, the Fourteenth Amendment, and 42 U.S.C. §1983 - Civil action for deprivation of rights. This court has jurisdiction of this action pursuant to 28 U.S.C. Section 1253 and Rules of the Supreme Court, Part III, Rule 10 (a) "...has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court," related to District Court denying standing, and related to Third Circuit Court taxing costs against appellant despite the District Court not having done so, and (c) "an important question of federal law that has not been, but should be, settled by this Court," as well as an important question of federal law that has been decided "in a way that conflicts with relevant decisions of this Court." Plaintiff's action

for declaratory relief is authorized by 28 U.S.C. Sections 2201 and 2202.

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STATEMENT OF FACTS

Appellant challenges the constitutionality of federal and state laws and policies that allow voting by machine or absentee in elections for public office.

Appellant asserts that the use of voting machines and absentee voting is a violation of her constitutional right to vote, to have votes counted properly, and to have those rights fully enforced under Article I § 2 of the U.S. Constitution, First Amendment, Fourteenth Amendment, and other federal laws.

Appellant is a U.S. citizen, resident, registered voter, and a freelance journalist in the City and County of Philadelphia. Appellant was also a poll watcher in Philadelphia in the 2004 presidential election.

For elections in the city and county of Philadelphia, the City Commissioners use absentee ballots and DREs (direct recording electronics) push button computerized voting machines. These machines are made by the Danaher Corporation (Delaware). Computerized ballot scanners, also from Danaher, are used to count absentee ballots. Hart Intercivic (Texas) provides the software for the ballot scanners.

Appellant asked the U.S. Court for the Eastern District of Pennsylvania to declare unconstitutional actions, laws, and regulations by the City and County of Philadelphia, the Commonwealth of Pennsylvania, and the U.S. Congress that allow or approve the use of voting machines and absentee ballots in elections for public office, including, but not limited to: 25 P.S. §3031.1, 25 P.S. §3547, 4 PA Code 171.11, 42 U.S.C. 1973ff-2(a) and 2 U.S.C. §9, and to enjoin the Philadelphia City Commissioners from using voting machines and absentee ballots in elections for public office, to enjoin the Secretary of the Commonwealth from approving voting machines in elections for public office, and to order the U.S. Attorney General to enforce voting rights in the City and County of Philadelphia.

The District Court had jurisdiction under 28 U.S.C. §§ 2201 & 2201; and by Rules 57 and 65 of the Federal Rules of Civil Procedure. Venue was proper pursuant to 28 U.S.C. §1391(b). The Court ruled against her on standing. Appellant appeal the decision. The Third Circuit Court of Appeals had jurisdiction

pursuant to 28 U.S.C. §1291. The Court of Appeals affirmed the District Court's decision. The Third Circuit also taxed defendants' costs against appellant. Appellant filed a motion requesting that all parties pay their own costs. Her motion was denied. Appellant has filed a timely appeal of the Court's Opinion and Judgment.

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1. BACKGROUND

From the beginning of this nation to the end of the Civil War, voting was a public and transparent process. After the war, as the elective franchise expanded to minorities and women, three changes to state and federal election laws were adopted that eventually made the voting process a private and nontransparent enterprise: a) absentee voting was allowed (1870's), b) the Australian secret ballot method was adopted (1880's), and c) voting machines were permitted by Congress (1899).

The use of voting machines and absentee voting has made vote fraud easy to commit and impossible to detect. Today, two corporations (ES&S and Diebold), which were started by two brothers (Bob and Todd Urosevich), electronically process via computerized ballot scanners or touchscreen computers approximately 80% of all votes in America. Approximately 30% of all votes are cast early or by absentee and 96.4% of all votes are processed by voting machines (lever, computerized ballot scanners, or touchscreen computers). In contrast, 95% of the world's democracies, including most of Europe, vote on hand-cast

and hand-counted paper ballots.

2. VENUE and STANDING

Federal court is the proper venue. A state's discretion and flexibility in establishing the time, place, and manner of electing its federal representatives has only one limitation, the state system cannot directly conflict with federal election laws on the subject. (McDonald v. Board of Election, 394 U.S. 802 (1969). Appellant asserts that the federal and state laws that allow for the use of voting machines and absentee ballots (which are inherently non-transparent and therefore deny effective voter participation, meaningful oversight, and full enforcement of voting rights), directly conflict with federal laws and the Constitution.

The District Court ruled, "Such concern involve questions of wide public significance that are most appropriately addressed by the legislative branch." Appellant respectfully disagrees. First, appellant has the right to challenge acts of the legislative branch (Marbury v. Madison, 5 U.S. 137 (1803), Reno v. American Civil Liberties Union, 521 US 844, 871(1997)). Second, appellant has the right to file a complaint in federal court before other remedies are exhausted (Title 42, Chapter 20, §1971(d)). Third, the Congress and state legislatures initiated the injury by passing laws that conflict with the Constitution and other federal laws. It does not follow that appellant must seek a remedy from the very parties who caused the injury.

The federal courts have the right and obligation to hear and appellant has the right to challenge the constitutionality of federal and state laws. In Marbury v. Madison the Supreme Court ruled,

"Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature repugnant to the constitution is void. This

theory is essentially attached to a written constitution, and is consequently to be considered by this court as one of the fundamental principles of our society."

"It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. [5 U.S. 137, 178] So if a law be in opposition to the constitution: if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law: the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty."

The Appeals Court ruled on Page 2, "...we agree with the District Courts' conclusion that Landes does not allege a "concrete and particularized" injury, and thereby lacks standing." The District Court ruled that Plaintiff's alleged injury amounts to a "generalized grievance" shared in "substantially equal measure by all or a large class of citizens" and is not sufficient to confer standing.

Plaintiff respectfully disagrees. Appellant's injury is not a 'grievance', but rather a 'violation' of civil rights. Under the court's reasoning (equating a 'violation' of federal law to a 'grievance'), standing could be denied on all issues of national significance, including gun control, prayer in school, abortion rights, and countless other issues that routinely come before the federal courts. The fact that third parties or a large class of citizens hold the same rights and suffer the same violation does not constitute grounds to dismiss. There is nothing in federal law or the Constitution that limits access to the courts in this manner.

The District Court's ruling appears to suggest that appellant can only assert a violation of voting rights if she has been the only victim or one of a small class of victims. Under that same

reasoning, appellees argued that appellant must prove discrimination took place in order to invoke laws under 42 U.S.C. Chapter 20, Sub. I-A-Enforcement of Voting Rights. However, according to 42 U.S.C §1973a, "Proceeding to enforce the right to vote (2) as part of any final judgment if the court finds that violations of the *Fourteenth or Fifteenth Amendment* justifying equitable relief have occurred in such State or subdivision." (Emphasis added by appellant) This means that under the Fourteenth Amendment, voting rights belong to all voters.

There is no place in federal law where it states that only small select classes of voters may enjoy federal enforcement of their right to vote while others may not. Literacy tests have been ruled unconstitutional for all voters, not just for a specific racial group. When states or counties require voters to use computers in order to vote and require election officials to use computers in order to count votes, their actions amount to mandating a modern day literacy test, except it is 'computer literacy' that is the test.

The Court does not say, but appellant theorizes, that the evidence the Court considers concrete could also be proof of vote fraud. Requiring such proof when the use complained of precludes the gathering of such evidence constitutes a Catch-22. Appellant's complaint is a constitutional challenge to laws and government policies. Under this circumstance she is not obligated to prove fraud or discrimination.

Is appellant's voting record relevant? No, not to appellant's knowledge, although the District Court made it an issue and ruled that appellant, "...fails to allege that she has ever voted in any prior election either by voting machine or by any means." On the contrary, appellant described herself as a registered voter in her original complaint and fully answered this allegation in both of her responses to Defendants Cortes and Ashcroft's Motion to Dismiss. Appellant has voted by machine and absentee in past elections in Philadelphia, although she has no proof that her vote was counted correctly for all the reasons stated in her complaint, responses, and appeals.

Does the Eleventh Amendment grant immunity from lawsuits? Appellee Cortes' counsel claimed to the District Court, "The Eleventh

Amendment bars plaintiff's state law claims to the extent she seeks to compel Secretary Cortes to comply with state law." (Page 6)
Appellant is not suing the state of Pennsylvania, but rather Appellant Cortes in his official capacity as the Secretary of the Commonwealth. Even if appellant were suing the state or its agencies, the Supreme Court recently decided that such suits are permissible. (*Tennessee v. Lane*, 541 US 509 (2004) and *Nevada v. Hibbs* 538 U.S. 721 (2003)).

Lastly, appellant could find little to connect appellant's complaint to the cases cited by the Appeals Court (*Anjelino v. New York Times*, 200 F.3d 73, 87 (3d Cir. 1999), *Storino v. Borough of Point Pleasant Beach*, 322 F. 3d 293, 296 (3d Cir.2003), and *Raines v. Byrd*, 521 U.S.811, 818-20 (1997)). None of these cases challenge the constitutionality of federal or state laws as in appellant's case. Anjelino involves claims of employment discrimination on the basis of sex with respect to compensation and assignment of work at the New York Times; Storino is a takings case and involves the decision of a local zoning board and residents' concerns about the potential loss of the value of real estate; and Raines is about patients' rights, health care providers, and insurance companies.

3. VIOLATIONS OF LAW

The use of voting machines and absentee voting denies the appellant as a voter and journalist the right to meaningful participation in the voting process, effective public oversight of that process, and full enforcement of those rights, constituting a "Deprivation of Civil Rights" under 42 U.S.C. §1983.

The right to vote is given under the Constitution to all qualified citizens (*Reynolds v. Sims* 377 U.S. 533, 1964, 42 U.S.C. § 1971) and guaranteed under Article I, § 2 of the U.S. Constitution, Fourteenth and 15th Amendments, and other Amendments and federal laws. To secure that right, Congress and the Courts set two strict requirements for the voting process: a) that voters qualified to vote shall be allowed to vote, and b) that their votes shall be counted properly. (*Allen v. Board of Elections* 393 U.S. 544,